

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 27th February, 2015.**

+ **LPA 39/2015 & CM No.1508/2015 (for condonation of delay)**

GALDHAN SANGAI & ANR

..... Appellants

Through: Mr. V. Shekhar, Sr. Adv. with Mr.
Kameshwar Singh, Mr. Nishant
Anand & Ms. Rushna Saif, Advs.

Versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Mohinder J.S. Rupal, Adv. for R-1.
Mr. Ankit Jain, Adv. for R-2 to 5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 11th July, 2014 of the learned Single Judge in W.P.(C) No.5162/2013 filed by the respondents No.2 to 5 namely Dr. Veena Gaur, Dr. Ashok Jain, Dr. Sanjay Kumar Singh and Jagbir Singh. Vide the said judgment, the selections for the post of Assistant Professors in the Department of Buddhist Studies made by the respondent No.1 University of Delhi pursuant to advertisement dated 11th January, 2012, were set aside, however with the caveat that those who had joined pursuant to the interim order dated 23rd October, 2013 in the said writ

petition, would continue in their posts, subject to no equities being claimed by them and the respondent No.1 University was granted liberty to recommence the procedure for filling up the posts from the stage of receipt of applications. The entire process was ordered to be completed expeditiously, not later than eight weeks.

2. This appeal as well as certain other appeals being LPAs No.521/2014, 546/2014 & 38/2015 also preferred against the same judgment came up before us on 29th January, 2015 when finding that this appeal need not be clubbed with the other appeals, we decided to deal with this appeal separately and on 12th February, 2015 heard the senior counsel for the two appellants, senior counsel for the respondent No.1 University and the counsel for the respondents No.2 to 5. The counsel for the respondents No.6 to 8 though had appeared on 29th January, 2015, chose not to appear on 12th February, 2015. Though the report of service of notice issued of the appeal to the respondents No.9 to 11 had not been received till then but the parties were *ad idem* that the respondents No.9 to 11 are not concerned with the subject matter of this appeal. We may also notice that the other appeals against the impugned judgment are still pending consideration and vide interim order therein, the operation of the order of the learned Single Judge

has been stayed.

3. The writ petition from which this appeal arises was filed by the respondents No.2 to 5, challenging the procedure followed by the respondent No.1 University for selection to the post of Assistant Professor in the Department of Buddhist Studies pursuant to the advertisement dated 11th January, 2012 inviting applications therefor. The said advertisement was *inter alia* for filling up of nine posts, of which five were in the unreserved category, two were in the Other Backward Classes (OBC) category and one each was in the Scheduled Castes (SC) and Scheduled Tribes (ST) category. The respondents No.2 to 5 writ petitioners belong to the unreserved / OBC category and were by way of the writ petition seeking appointment to the posts meant for unreserved / OBC category and to which they claimed to be entitled to.

4. The two appellants herein namely Mr. Galdhan Sangai and Mr. Dharmendra Kumar belong to the ST and the SC category respectively and had been selected for the two reserved posts for the said categories. The respondents No.2 to 5 / writ petitioners, who as aforesaid were claiming appointments to the unreserved posts, while filing the writ petition challenging the procedure followed for selection, did not even implead the

appellants as parties to the writ petition. However since vide ad-interim order dated 21st August, 2013 in the writ petition, the respondent No.1 University was restrained from finalising the selection process and the recommendations made for issuing appointment letters was also stayed, the appellants applied in the writ petition for impleadment and were so impleaded vide order dated 9th September, 2013. The appellants then applied for vacation of the ad-interim order and on which application, on 31st October, 2013 *inter alia* the following order was made:

“It is clarified that since there are four petitioners who challenge selection process, only for the four posts in the categories to which the petitioners had applied, the interim order will operate, and rest of the posts can be filled in by the respondent No.1 in accordance with law.”

The said interim order continued till the disposal of the writ petition.

5. The appellants were thereafter appointed to the two posts reserved for the ST and SC category.

6. The learned Single Judge, in the impugned judgment also, has in paragraph 3 thereof, observed:

“In this petition, we are only concerned with the post advertised in the unreserved and OBC category”

and in para 3.5 observed:

“Though, we are not concerned with SC and ST category in this case, for the sake of record, it may be noted that for SC category, 62 candidates and for ST category, 29 candidates were short-listed.”

7. However, the learned Single Judge in the impugned judgment, while allowing the writ petition, has set aside all the selections made pursuant to the advertisement dated 11th July, 2012 and directed fresh appointments to be made.

8. The contention of the senior counsel for the appellants is that though in the scenario aforesaid, the challenge in the writ petition was confined to the appointments made to the unreserved / OBC posts only, while allowing the writ petition, the appointments made to the SC and ST category posts, have also been set aside.

9. Though the appellants highlighting the said facts sought review from the learned Single Judge but the review application was dismissed vide order dated 13th November, 2014, merely observing that “no case is made out for review”. Accordingly, relief in this appeal of setting aside of the impugned judgment insofar as against the appellants, is claimed.

10. The senior counsel for the respondent No.1 University has supported the appellants.

11. The counsel for the respondents No.2 to 5 / writ petitioners has argued:

- (i) that no sufficient ground for condoning the delay of 125 days in filing the appeal (and for which purpose CM No.1508/2015 is filed) is made out;
- (ii) that no explanation for the delay in filing, even after the dismissal of the review, is given;
- (iii) that the learned Single Judge having found an error in the procedure followed for appointment, has rightly set aside the entire appointment process and it is not possible to set aside the said process vis-a-vis unreserved / OBC posts and to not qua the SC and ST category posts;
- (iv) that even at the time of hearing before the learned Single Judge, no such distinction was made out and such a contention was raised by the counsel for the appellants for the first time in review;
- (v) that the appellants in the prayer paragraph in this appeal, have not even sought setting aside of the order of dismissal of review application;
- (vi) reliance is placed on *State of Uttar Pradesh Vs. Arvind Kumar*

Srivastava (2015) 1 SCC 347 laying down that the normal rule is that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India; it was further held that this principle needs to be applied in service matters more emphatically as the service jurisprudence postulates that all similarly situated persons should be treated similarly and that merely because other similarly situated persons did not approach the Court earlier, is no ground for treating them differently; the only exception being of laches, delays and acquiescence i.e. those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay, only because of the reason that their counterparts who approached the Court in time succeeded in their efforts, cannot claim the benefit of the judgment, being fence-sitters; however this exception would not apply, when the judgment of the Court is in rem;

(vii) reliance is also placed on *Senior Law Manager, Indian Oil Corporation Limited Vs. Guru Shakti Singh* (2011) 15 SCC 140

laying down that if the finding was that the marks were wrongly assigned and owing whereto somebody had benefited, merely because the complainant had died, the said illegality could not be brushed aside or ignored and such a selection process cannot be saved. On the basis of the said judgment, it is contended that once the learned Single Judge has found the process of selection adopted by the respondent No.1 University to be flawed and the same process having been followed qua the appointment to the post reserved for SC and ST categories also, the said flawed procedure cannot be allowed to govern the appointments and the learned Single Judge has rightly, notwithstanding the challenge being confined to the unreserved and OBC category posts, set aside the appointments made to the posts reserved for SC and ST category also.

12. We however enquired from the counsel for the respondents No.2 to 5 / writ petitioners, whether any aspirant to the post reserved for SC and ST category had challenged the appointment of the appellants thereto.

13. The answer was in the negative.

14. The respondents No.2 to 5 / writ petitioners cannot obviously be allowed to hold the brief for the other aspirants to the posts reserved for SC

and ST category.

15. The senior counsel for the respondent No.1 University contended that there were no averments also in the pleadings of the respondents No.2 to 5 / writ petitioners qua the selection to the SC and ST category posts and that in fact the criteria of screening for the purpose of interview, adopted for selection for the unreserved / OBC category posts and which criteria was challenged in the writ petition and which has found favour with the learned Single Judge, was not even applied to SC and ST category posts. It is stated that no such screening was done, while calling the SC and ST category candidates for interview.

16. The senior counsel for the appellants has also contended that since the learned Single Judge vide interim order dated 31st October, 2013 supra in the writ petition had confined the ad-interim order dated 21st August, 2013 supra only to four posts in the unreserved / OBC category, the appointment of the appellants was not even subject to the decision in the writ petition and thus the decision in the writ petition cannot affect the appointments already made of the appellants.

17. The counsel for the appellants, in accordance with our direction while reserving judgment, has supplied copy of the counter affidavit filed by the

appellants to the writ petition and which also supports the arguments hereinabove of the appellants and the respondent No.1 University. We have also perused the writ record.

18. We find considerable weight in the contentions of the appellants supported by the respondent No.1 University. It is obvious from the way the writ petition proceeded before the learned Single Judge that the challenge made by the respondents No.2 to 5 / writ petitioners was confined to the unreserved / OBC posts and the SC and ST category posts were specifically excluded. There is nothing in the impugned judgment or in the writ record to indicate that the said posts were at any subsequent time included in the challenge in the writ petition. That being the position, the decision in the writ petition cannot be allowed to affect the SC and ST category posts. Once it is found so, the impugned judgment, insofar as qua the SC and ST category posts, has but to be held to be *non-est* and that being the position, the delay by the appellants in preferring this appeal does not come in the way of the appellants. We accordingly condone the delay.

19. As far as the judgments relied upon by the counsel for the respondents No.2 to 5 writ petitioners are concerned, ***Arvind Kumar Srivastava*** supra itself carves out an exception qua persons who do not

challenge or who are fence-sitters. Here, no other aspirant to the SC / ST categories posts has till date come forward. Moreover, therein as well as in ***Guru Shakti Singh*** supra, the Supreme Court found the same process of selection / appointment, which was found to be irregular, to have been followed for filling up all the posts. That is not the position here. We have no reason to doubt the statement of the senior counsel for the respondent No.1 University that the screening criteria for interview, finding which to be faulty, the learned Single Judge has set aside the selection / appointment, was not followed qua the SC and ST category posts. In fact, the respondents No.2 to 5 / writ petitioners, since prior to the said advertisement were working on the said posts on *ad-hoc* basis. In spite of our asking whether there were any *ad-hoc* appointees to the SC and ST category posts also, the counsel for the respondents No.2 to 5 / writ petitioners could not reply. It is obvious that the writ petition was not concerned with SC and ST category posts. Thus, the judgments cited by the counsel for the respondents No.2 to 5 / writ petitioners, have no application.

20. The Supreme Court, in ***State of U.P. Vs. Satya Narain Kapur*** (2004) 8 SCC 630, though not in context of selection / appointment, found merit in the contention that where the issue arising for decision in the writ petition

before the Court was confined to two shops only, then eight government orders with respect to eight shops could not have been nullified. It was held that if the High Court, in public interest, felt that allotment of other shops also should be nullified, it should have raised that specific issue. Similarly, the writ petition from which this appeal arises was not filed in public interest and in any case there can be no public interest litigation in service matters (see *Dr. Duryodhan Sahu Vs. Jitendra Kumar Mishra* (1998) 7 SCC 273 & *B. Srinivas Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association* AIR 2006 SC 3106). The learned Single Judge also, neither in the impugned judgment nor in the order on review petition, has given any reason whatsoever for extending the judgment to the posts reserved for SC and ST category.

21. We also drew the attention of the counsel for the respondents No.2 to 5 writ petitioners to the judgment also of the Supreme Court in *Delhi Administration Vs. Gurdip Singh Uban* (1999) 7 SCC 44, though in relation to the land acquisition, holding that the benefit of the challenge made to the acquisition notification has to be confined only to those who preferred objections to the acquisition and cannot be extended to those who had not preferred objections, though their land was also acquired vide the

same notification which was set aside qua those who had approached the Court.

22. We are therefore of the view that the appeal deserves to be allowed.

23. The counsel for the respondents No.2 to 5 / writ petitioners lastly contended that allowing this appeal may affect the decision in the other appeals against the same judgment which are pending consideration.

24. Though in view of the reason given hereinabove, in our opinion, that possibility does not arise but nevertheless we clarify that none of the observations made herein would affect the decision of the other appeals impugning the said judgment.

25. The appeal therefore succeeds and is allowed; the judgment of the learned Single Judge, to the extent of setting aside the appointments to the post of Assistant Professor in the Department of Buddhist Studies reserved for SC and ST category, is set aside on the ground that the appointments to the said posts were not under challenge in the writ petition.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 27, 2015

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